IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 48 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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JINAL CHEM

Versus

ABHINISHA INTERMEDIATES LTD.

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Appearance:

1. COMPANY PETITION No. 48 of 2002

MR BA VAISHNAV for Petitioner No. 1

MR GM JOSHI for Respondent No. 1

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CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 18/01/2003

ORAL JUDGEMENT

The petitioner is a partnership firm which has filed this petition praying for an order for winding up

of Abhinisha Intermediates Ltd. on the ground that the said Company is unable to pay its dues.

2. Learned advocate Shri Vaishnav appearing for the petitioner firm has submitted that the petitioner firm had business dealings with the respondent-Company. The petitioner firm had supplied certain chemicals including P.N.A. and Soda Ash to the respondent-Company. Goods worth Rs. 2,66,714/- were supplied by the petitioner to the respondent-Company during or before 1999. The Company had made payment only to the extent of Rs. 1, 50,000/- towards its dues and as the Company had not made payment of the remaining amount, the petitioner had demanded the said amount on several occasions but as the amount was not paid, ultimately statutory notice dated 8th December, 2001 had been given to the respondent-Company. Inspite of service of the statutory notice, the amount payable by the respondent-Company was not paid to the petitioner firm.

3. Learned advocate Shri Vaishnav has drawn my attention to several letters written by the respondent-Company to the petitioners admitting the fact that the Company was unable to make payment on account of adverse market condition and recession in the market. Thus, he has submitted that the Company has admitted its dues and as the Company has failed to make payment of its dues to the petitioner firm, the respondent-Company be wound up.

4. Learned advocate Shri Gautam Joshi appearing for the respondent-Company could not dispute the fact that the Company has not paid the amount due and payable by it. It has been submitted by him that only on account of ressession in the market, at present, the respondent-Company is not in a position to make payment of its dues. He has however submitted that the Company is doing reasonably well and no order with regard to winding up of the Company should be passed as the Company can very well make the payment within some time.

5. I have heard the learned advocates and have noted the fact that the Company is unable to pay its dues. So as to substantiate the arguments with regard to the Company's ability to make payment, learned advocate Shri Gautam Joshi has not adduced any evidence. Moreover, the fact that the Company has not paid its dues since long and even after filing of the present petition, as the Company has not paid any amount to the petitioner firm, it is clear that the Company is unable to pay its dues which exceed Rs. 500/- . Looking to the fact that the

Company is unable to pay its debts to its creditors, the Company deserves to be wound up.

6. For the reasons stated hereinabove, the petition is allowed and Abhinisha Intermediates Ltd. is ordered to be wound up. The Official Liquidator attached to this Court is appointed as an Official Liquidator and he shall take possession of the assets of the Company and he is empowered to take all necessary actions as per the provisions of the Companies Act. The petition stands disposed of as allowed.

(A.R. DAVE,J.)

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